

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1288

Introduced by Assembly Member Fong

February 27, 2009

An act to add Article 2.5 (commencing with Section 2811) to Chapter 2 of Division 3 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1288, as amended, Fong. Employment: hiring practices: electronic employment verification.

The E-Verify Program of the United States Department of Homeland Security, in partnership with the United States Social Security Administration, enables participating employers to use the program, on a voluntary basis, to verify that the employees they hire are authorized to work in the United States.

The bill would prohibit the state, or a city, county, city and county, or special district, from requiring an employer other than one of those government entities to use an electronic employment verification system.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares ~~both~~ all of the
- 2 following:
- 3 (a) Federal law establishes an electronic employment verification
- 4 system originally known as the Basic Pilot Program (enacted by
- 5 Section 404 of Public Law 104-208), ~~but more commonly known~~

1 as the E-Verify Program, as an experimental and temporary system
2 available to employers on a voluntary basis.

3 (b) *A 2007 independent evaluation commissioned by the federal*
4 *Department of Homeland Security found that the electronic*
5 *employment verification database was still not sufficiently up to*
6 *date to meet requirements for accurate verification. This has led*
7 *to employers being unable to hire employees in a timely manner*
8 *and kept workers from earning wages.*

9 (c) *Mandatory use of an electronic employment verification*
10 *program would increase the costs of doing business in a difficult*
11 *economic climate. The United States Chamber of Commerce*
12 *estimates that the net societal cost of all federal contractors using*
13 *the Basic Pilot Program would amount to \$10 billion a year,*
14 *federally.*

15 (d) *California businesses would face considerable odds in*
16 *implementing such a program. Employers using the program report*
17 *that staff must receive additional training that disrupts normal*
18 *business operations.*

19 (e) *Employers report that the cost, technological demands, and*
20 *staff time that an electronic employment verification system*
21 *requires to use and implement come at a time when they are*
22 *already struggling.*

23 (f) *In January 2009, California's unemployment rate rose to*
24 *over 9 percent, four percentage points in just two years. The state*
25 *must pursue all avenues in facilitating and incubating job*
26 *development and economic growth.*

27 ~~(b)~~

28 (g) Therefore, it is the intent of the Legislature that the state
29 maintains the intent of federal law by ensuring that private
30 employers retain the ability to choose whether to participate in the
31 electronic verification program.

32 SEC. 2. Article 2.5 (commencing with Section 2811) is added
33 to Chapter 2 of Division 3 of the Labor Code, to read:

34
35 Article 2.5. Electronic Employment Verification Systems
36

37 2811. *This article shall be known and may be cited as the*
38 *Employment Acceleration Act of 2010.*

1 ~~2811.~~

2 2812. Neither the state nor a city, county, city and county, or
3 special district shall require an employer to use an electronic
4 employment verification system, including under the following
5 circumstances:

6 (a) As a condition of receiving a government contract.

7 (b) As a condition of applying for or maintaining a business
8 license.

9 (c) As a penalty for violating licensing or other similar laws.

10 ~~2812.~~

11 2813. For purposes of this article, the following terms have
12 the following meanings:

13 (a) “Electronic employment verification system” means an
14 employment verification system that allows employers to
15 electronically verify workers’ employment authorization with the
16 federal government. This includes the Basic Pilot Program, enacted
17 by Section 404 of Public Law 104-208, renamed in 2007 as the
18 E-Verify Program, and other pilot programs for electronic
19 employment eligibility confirmation. The term “electronic
20 employment verification system” does not include the I-9
21 Employment Eligibility Verification form or any other employment
22 eligibility systems that are required by federal law.

23 (b) “Employer” means an employer other than the state, or a
24 city, county, city and county, or special district.